

National Science Foundation
The Notification and Federal Employee Antidiscrimination
And
Retaliation Act of 2002 ("No FEAR Act")
Section 203(a) (7) Analysis

Introduction

The National Science Foundation (NSF) is pleased to present its report on the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 ("No FEAR Act") covering Fiscal Year (FY) 2011, which summarizes many of NSF's significant achievements in its equal employment opportunity (EEO) programs. NSF is committed to achieving equality for all employees through its management decisions, personnel actions, and programs that are designed to address such issues.

In accordance with the Equal Employment Opportunity Commission (EEOC) Management Directive (MD) 715, NSF conducts an annual analysis of its workforce to ensure agency personnel policies, principles, and practices provide employment opportunities for all employees, particularly minorities, women and individuals with disabilities. NSF's EEO complaint program, which includes alternative dispute resolution and early intervention, provides for a prompt, fair, and impartial review of allegations of discrimination and other employment-related concerns.

Although the number of complaints fluctuates from year to year, historically, NSF has not experienced a large number of complaints, and fiscal year FY 2011 is no exception. During FY 2011, a total of 10 informal complaints were initiated, and 10 formal complaints were carried over from FY 2010 for a total of 20 active complaints (informal and formal)¹. Of the 10 informal complaints filed in FY 2011, one was withdrawn, one was settled, and one did not file formal. The remaining seven complaints progressed through the administrative complaint process and remained in inventory along with the 10 complaints carried over from FY 2010, in which two were closed, for a total of 15 complaints at the end of FY 2011.

There were no cases filed in Federal court against NSF under the Federal antidiscrimination laws or whistleblower protection laws. NSF follows overall agency adverse and disciplinary action practices, procedures, and case law on determining appropriate action to be taken based on the nature of the offense when there is a violation. Additionally, NSF continues to regularly assess its practices and policies to ensure compliance with EEO laws and to avoid systemic barriers to EEO.

NSF has developed an online training module for existing employees on the provisions of the No FEAR Act, in which recertification training is required every two years. In FY 2011, 298

¹ Note that not all informal complaints progress to the formal stage.

employees (20.5%) completed training via the online module,² and 273 employees received the training via new employee orientation. The 2011 Analysis, which provides an overview of the data required by the No FEAR Act, is attached as Enclosure 2. Additionally, this Analysis addresses on-going initiatives that demonstrate NSF's commitment to ensuring a diverse and dynamic workforce that is poised to carry out NSF's mission into the 21st century and beyond.

² The recertification training requirement is a bi-annual process. When the on-line training began, the majority of the existing workforce took it that year, so every other year will show a large recertification of the training. For example, in FY 2009, 1393 employees (79.33%) were recertified. Off-years consist primarily of new employees who began working at NSF after the initial on-line process started.

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For Period Covering October 1, 2010, to September 30, 2011

TAB 1

T-1: No FEAR Act Awareness Training (Academy Learn online training)³

³Copies of NSF's on-line training module and its in-class presentation appear at Enclosures 1 and 3, respectively. Please contact NSF's Office of Diversity and Inclusion for more information regarding this training.

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TAB 2

T-2: 2011 ANALYSIS – Section 203(a)(7)

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2002 ("No FEAR Act")**

2011 ANALYSIS – Section 203(a)(7)

A. Trend Analysis

During Fiscal Year (FY) 2011, a total of 10 informal complaints were initiated. Of the informal complaints filed, one was voluntarily withdrawn, one was settled and one did not file a formal complaint. The remaining seven informal complaints progressed through the administrative complaint process.

In addition to the seven informal complaints that progressed to the formal stage, there were 10 formal complaints on-hand at the beginning of FY 2011 for a total of 17 formal complaints. Of the 17 formal complaints, two were closed and 15 remained in inventory at the end of FY 2011.

There was one complaint filed under Title VI of the Civil Rights Act of 1964, as amended, and no complaints filed under Title IX of the Education Amendments of 1972, as amended. There were no complaints filed under Section 504 of the Rehabilitation Act of 1973.

B. Causal Analysis

During fiscal years 2010 and 2011, the number of informal complaints remained the same. While NSF has not historically experienced a large number of complaints, the Office of Diversity and Inclusion (ODI), conducted an analysis of the informal complaints initiated in FY 2011 for potential trends and/or barriers. A review of the complaints showed two were filed from employees in the same unit, but in different divisions under different direct supervisors.

C. Practical Knowledge Gained through Experience

NSF is committed to equal employment opportunity (EEO) principles and practices in all of its management decisions and personnel activities. It is the goal of NSF to develop and retain a high-quality, diverse workforce that is representative of our nation's diversity. NSF believes that a culturally diverse environment promotes better communication, ideas, and trust between individuals. Therefore, NSF will continue its emphasis on attracting the best candidates from a variety of sources, selecting and advancing the best qualified employees based upon merit, training its managers and employees on their EEO rights and responsibilities, providing equal opportunities to all individuals, and providing a prompt, fair and impartial review and adjudication of any allegations of discrimination.

D. Actions Planned/Taken to Improve Agency Complaint or Civil Rights Program

During FY 2011, NSF's noteworthy accomplishments include the following:

- ODI continued to update the Notification of Federal Employee Anti-discrimination and Retaliation Act (No FEAR Act) data on its website in accordance with the No FEAR Act of 2002.
- ODI continued to be cognizant of the regulatory requirements of timely processing of complaints and continued to strive in adhering to this requirement. ODI has always had in place an efficient and expeditious process of employing contractor services for ODI investigations and alternative dispute resolution (ADR), and in FY 2010 re-instituted its Early Intervention Program resulting in the resolution of one complaint that could have resulted in an EEO filing.
- NSF continued its agency-wide distribution of EEO and Harassment Policy Statements signed by the Director and Deputy Director (policies are distributed annually). All EEO and related brochures were updated and provided at all training sessions, which include: EEO complaint brochure, the Early Intervention Program (EIP) brochure, Reasonable Accommodations brochure, Prevention of Sexual Harassment and Diversity booklets, and *Guide to Etiquette and Behavior for Communicating and Working with Individuals with Disabilities* brochure. The relevant documents were also provided to employees during the complaint initial intake process.
- NSF continued to regularly assess its practices and policies to ensure compliance with EEO laws and to avoid systemic barriers to EEO. NSF continued its very successful reasonable accommodations program that provides employees, applicants, visitors and panelists with disabilities with reasonable accommodations. In FY 2011, the Department of Defense Computer/Electronic Accommodation Program (CAP) provided 39 NSF reasonable accommodations, which is a decrease of 77.71% from FY 2010. Additionally, the total expenses incurred for reasonable accommodations from NSF's "centralized fund" showed a 13.6% decrease from FY 2010.⁴
- ODI, in addition to the on-line training module, continued to conduct the No FEAR Act training as part of the New Employees Orientation (NEO). Employees were provided information on their rights under the antidiscrimination and whistleblower laws.⁵ Approximately 273 new employees received this training during FY 2011.
- Devised and implemented a new course entitled "NSF Becoming a Model EEO Agency: The Role of Managers and Supervisors", a training module that was completed by 100%

⁴CAP Provides information based on the number of accommodation, not the number of employees assisted.

⁵Moreover, in FY 2011, the NSF Director issued to all employees the agency's policy on "Understanding Prohibited Personnel Practices, Whistleblower Protections, and the Hatch Act."

of NSF managers and was devised to ensure managers had a clear understanding of their role in assisting NSF attain model EEO status. Areas covered in the course include:

- Alternative dispute resolution and conflict resolution, with a focus on agency processes in place, how these processes can assist in resolving conflicts/disputes in their respective work environments, and effective communications. Training also covered NSF's intervention and facilitation processes, designed to create a forum to address and correct tension in the workplace;
- EEO complaints process with a focus on the applicable laws and regulations, as well as the manager's responsibilities during the informal, formal, and hearing processes, inclusive of cooperation with EEO officials during the EEO process;
- Diversity, which focused on the manager's role in ensuring the workplace is inclusive and free from all forms of discrimination, harassment, and retaliation, as well as consequences of unacceptable behavior;
- Religious accommodation, which included a discussion on the process as well as undue hardship; and
- Reasonable accommodation, which also covered the manager's role in the process, confidentiality, and undue hardship.
- NSF strategically integrated EEO into the agency's mission in which it became one of the first federal agencies to incorporate language into its Strategic Plan that specifically connects the goal of attaining model EEO status to EEOC-specific criteria. This goal was also incorporated within performance goals for implementation as part of the Government Performance and Results Act (GPRA), in which the ODI Director served as a Lieutenant, and the three measures identified were met.
- ODI revised its EEO training materials for New Employee Orientation (NEO), EEO briefings for various offices at their request in which more than 273 employees received the training, provided EEO and diversity training to 100% of its supervisors and managers, and provided EEO training at every NSF Program Managers Seminar.⁶
- ODI continued its focus on assisting the agency best achieve model EEO status by focusing on the following principles: demonstrated commitment to EEO from agency leadership; integration of EEO into the agency's strategic mission; management and program accountability; proactive prevention of unlawful discrimination; efficiency; and responsiveness and legal compliance, in which significant strides were made in addressing the remaining actions necessary to successfully complete the Model EEO Agency checklist.
- ODI reestablished its participation on The Department of Justice Interagency Working Group charged with Title IX compliance issues.

⁷ A copy of the presentation offered in NEO appears at Enclosure 3.

- Revised and implemented a webpage and a brochure detailing NSF's compliance responsibilities under Title IX of the Education Amendments of 1972.
- ODI continued development of its first Title IX Compliance Review Plan, which lays the framework for NSF's compliance review program.
- NSF continued to emphasize its Strategic Plan, 2006--2011, which focused on the agency's commitment to diversity and to its workforce in its goal of "Learning - cultivate a world-class, broadly inclusive science and engineering workforce, and expand the scientific literacy of all citizens" as well as in its internally focused goal of "Stewardship – support excellence in science and engineering research and education through a capable and responsive organization."
- The Equal Opportunity Liaisons (EOL) remained actively involved in the ODI's strategic planning initiatives.
- The Language Access Working Group (LAW) was implemented to guide NSF with its limited English proficiency goals.
- ODI increased its involvement in NSF's Broadening Participation initiatives, which included presenting on civil right issues impacting recipients of federal funds at NSF Regional Conferences in Salt Lake City, Utah; Nashville, Tennessee, and at a HBCU conference in New Orleans, Louisiana. Additionally, ODI has representation on the Title IX Working Group (DOJ/NASA/DOE) that deals primarily with compliance issues.
- NSF's various directorates and offices actively participated in eight Special Emphasis Programs and six Diversity Dialogue Series that were held throughout the year, in which they co-sponsored events, recommended guest speakers, moderated the programs, or introduced the guest speakers.
- ODI increased its active partnership with Human Resources and the Office of General Counsel through monthly meetings. The purpose of these meetings is to allow better communication between offices and the resolution of issues of common purpose.

ODI's website was updated during FY 2011 to make it more accessible to internal and external customers as well as improved its communication with its customers to better serve them through enhanced communication and face-to-face involvement.

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TAB 3

T-3: No FEAR Act Awareness Training FY 2013 (Live training)⁷

⁷ Please contact NSF's Office of Diversity and Inclusion for more information regarding this training.